

1 AN ACT concerning electronic mail.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the
5 Unsolicited Commercial Electronic Mail Act.

6 Section 5. Definitions. As used in this Act:

7 (a) "Illinois electronic mail address" means any of the
8 following:

9 (1) An electronic mail address furnished by an
10 electronic mail service provider that sends bills for
11 furnishing and maintaining that electronic mail address
12 to a mailing address in this State.

13 (2) An electronic mail address ordinarily accessed
14 from a computer located in this State.

15 (3) An electronic mail address furnished to a
16 resident of this state.

17 (b) "Commercial electronic mail advertisement" means any
18 electronic mail message initiated for the purpose of
19 advertising or promoting the lease, sale, rental, gift offer,
20 or other disposition of any property, goods, services, or
21 extension of credit.

22 (c) "Direct consent" means a recipient's unambiguous
23 expression of permission to receive a commercial electronic
24 mail advertisement of the type transmitted, where the
25 recipient has clear and conspicuous notice of the scope of
26 the permission, including the types of commercial electronic
27 mail advertisements and the senders or types of senders
28 included, at the time the recipient grants that permission.

29 (d) "Domain name" means any alphanumeric designation
30 that is registered with or assigned by any domain name
31 registrar as part of an electronic address on the Internet.

1 (e) "Electronic mail" means an electronic message that
2 is transmitted between 2 or more telecommunications devices,
3 computers, or electronic devices capable of receiving
4 electronic messages, whether or not the message is converted
5 to hard copy format after receipt or is viewed upon
6 transmission or stored for later retrieval. "Electronic mail"
7 includes electronic messages that are transmitted through a
8 local, regional, or global computer network.

9 (f) "Electronic mail address" means a destination,
10 commonly expressed as a string of characters, to which
11 electronic mail can be sent or delivered. An "electronic mail
12 address" may include a user name or mailbox and a reference
13 to an Internet domain.

14 (g) "Electronic mail service provider" means any person,
15 including an Internet service provider, that is an
16 intermediary in sending or receiving electronic mail or that
17 provides to end users of the electronic mail service the
18 ability to send or receive electronic mail.

19 (h) "Functioning return electronic mail address" means
20 an electronic mail address displayed in a commercial
21 electronic mail advertisement that has the capacity to
22 receive the number of reply messages that the sender of the
23 commercial electronic mail advertisement should reasonably
24 expect to be transmitted by the recipients of the commercial
25 electronic mail advertisement for no less than 30 days after
26 the sending of the commercial electronic mail advertisement.

27 (i) "Header information" means the source, destination,
28 and routing information attached to the beginning of an
29 electronic mail message, including the originating domain
30 name and originating electronic mail address.

31 (j) "Initiate the transmission of a commercial
32 electronic mail advertisement" means to transmit or cause to
33 be transmitted a commercial electronic mail advertisement or
34 assist in the transmission of a commercial electronic mail

1 advertisement by providing or selecting electronic mail
2 addresses to which the advertisement may be sent, but does
3 not include the transmission of the advertisement through the
4 network or system of a telecommunications utility or an
5 electronic mail service provider.

6 (k) "Internet" means the global information system that
7 is logically linked together by a globally unique address
8 space based on the Internet Protocol (IP), or its subsequent
9 extensions, and that is able to support communications using
10 the Transmission Control Protocol/Internet Protocol (TCP/IP)
11 suite, or its subsequent extensions, or other IP-compatible
12 protocols, and that provides, uses, or makes accessible,
13 either publicly or privately, high level services layered on
14 the communications and related infrastructure.

15 (l) "Preexisting or current business relationship," as
16 used in connection with the sending of a commercial
17 electronic mail advertisement, means either of the following:

18 (1) The recipient has purchased or leased property,
19 goods, or services from the sender and both of the
20 following conditions are met:

21 (A) The subject of the commercial electronic
22 mail advertisement concerns that purchase or lease.

23 (B) The commercial electronic mail
24 advertisement is sent within 12 months of the
25 purchase or lease or within any longer express
26 warranty period.

27 (2) The recipient has an ongoing contract with the
28 sender and the commercial electronic mail advertisement
29 directly concerns the ongoing contract.

30 (m) "Recipient" means the addressee of a commercial
31 electronic mail advertisement. If an addressee of a
32 commercial electronic mail advertisement has one or more
33 electronic mail addresses to which a commercial electronic
34 mail advertisement is sent, the addressee shall be deemed to

1 be a separate recipient for each address to which the
2 advertisement is sent.

3 (n) "Sender" means a person who initiates a commercial
4 electronic mail advertisement.

5 (o) "Unsolicited commercial electronic mail
6 advertisement" means a commercial electronic mail
7 advertisement sent to a recipient who meets both of the
8 following criteria:

9 (1) Has not provided direct consent to receive the
10 commercial electronic mail advertisement.

11 (2) Does not have a preexisting or current business
12 relationship with the sender or offeror of the property,
13 goods, or services.

14 Section 10. Prohibitions.

15 (a) Notwithstanding any other provision of law, no
16 person may do either of the following:

17 (1) Initiate an unsolicited commercial electronic
18 mail advertisement from Illinois.

19 (2) Initiate an unsolicited commercial electronic
20 mail advertisement to an Illinois electronic mail
21 address.

22 (b) The provisions of this Section are severable. If any
23 provision of this Section or its application is held invalid,
24 both of the following shall occur:

25 (1) That invalidity shall not affect any other
26 provision or application that can be given effect without
27 the invalid provision or application.

28 (2) Sections 15 and 20 shall become operative.

29 Section 15. Unsolicited commercial electronic mail;
30 requirements.

31 (a) Any sender of unsolicited commercial electronic mail
32 advertisements either from Illinois or to an Illinois

1 electronic mail address shall do all of the following:

2 (1) Maintain a functioning return electronic mail
3 address to which a recipient may send a reply indicating
4 the recipient's desire not to receive further commercial
5 electronic mail advertisements from the sender at the
6 electronic mail address at which the message was
7 received.

8 (2) Clearly and conspicuously disclose in the
9 commercial electronic mail advertisement all of the
10 following:

11 (A) The recipient's right to decline to
12 receive further commercial electronic mail
13 advertisements at the electronic mail address at
14 which the message was received.

15 (B) The recipient's ability to decline to
16 receive further commercial electronic mail
17 advertisements by sending a message to the sender's
18 functioning return electronic mail address.

19 (C) The sender's functioning return electronic
20 mail address.

21 (b) It is unlawful for any person to initiate the
22 transmission of an unsolicited commercial electronic mail
23 advertisement either from Illinois or to an Illinois
24 electronic mail address under any of the following
25 circumstances:

26 (1) The commercial electronic mail advertisement
27 contains or is accompanied by a third party's domain name
28 without permission of the third party.

29 (2) The commercial electronic mail advertisement
30 contains or is accompanied by falsified, misrepresented,
31 obscured, or forged header information.

32 (3) The commercial electronic mail advertisement
33 has a subject line that has the capacity or tendency to
34 mislead the public about the contents of the

1 advertisement.

2 (4) The sender is in violation of subdivision (a)
3 or the commercial electronic mail advertisement does not
4 contain the notice required by subdivision (a).

5 (5) The potential recipient of the commercial
6 electronic mail advertisement or a recipient of a past
7 commercial electronic mail advertisement has informed the
8 sender, by use of the functioning return electronic mail
9 address or by other electronic or written means
10 communicated to the sender, that the recipient does not
11 wish to receive commercial electronic mail advertisements
12 at that electronic mail address.

13 (6) An employer has informed the sender, as
14 provided in subdivision (c), not to send further
15 commercial electronic mail advertisements to designated
16 electronic mail addresses.

17 (c) An employer who provides or has control over one or
18 more electronic mail addresses used by its employees may
19 notify the sender of an unsolicited commercial electronic
20 mail advertisement, by use of the functioning return
21 electronic mail address or by other electronic or written
22 means communicated to the sender, that no further commercial
23 electronic mail advertisements should be transmitted to any
24 of the employer-provided and employer-controlled electronic
25 mail addresses.

26 (d) In addition to the prohibitions described in
27 subdivision (b), it is unlawful for any person to initiate
28 the transmission of an unsolicited commercial electronic mail
29 advertisement from Illinois or to an Illinois electronic mail
30 address unless all of the following conditions are satisfied:

31 (1) The subject line of the commercial electronic
32 mail advertisement includes "ADV:" as the first 4
33 characters.

34 (2) If the commercial electronic mail advertisement

1 is intended for the purpose of the lease, sale, rental,
2 gift offer, or other disposition of any property, goods,
3 services, or extension of credit that may only be viewed,
4 purchased, rented, leased, or held in possession by an
5 individual 18 years of age or older, the subject line of
6 the commercial electronic mail advertisement shall
7 include "ADV:ADLT" as the first eight characters.

8 (e) This Section shall remain inoperative until any
9 provision of Section 10 or its application is held invalid,
10 at which time this Section shall become operative.

11 Section 20. Unsolicited commercial electronic mail;
12 transmission.

13 (a) It is unlawful for any person to sell or otherwise
14 provide a list of electronic mail addresses to be used to do
15 either of the following:

16 (1) Initiate the transmission of unsolicited
17 commercial electronic mail advertisements from Illinois.

18 (2) Initiate the transmission of unsolicited
19 electronic mail advertisements to an Illinois electronic
20 mail address.

21 (b) This Section shall remain inoperative until any
22 provision of Section 10 or its application is held invalid,
23 at which time this Section shall become operative.

24 Section 25. Remedies.

25 (a) In addition to any other remedies provided by this
26 Act or by other provisions of law, a recipient of a
27 commercial electronic mail advertisement transmitted in
28 violation of Section 10, 15, or 20 may bring an action to
29 recover either actual damages or \$500 for each individual
30 violation, whichever is greater, and may also recover
31 reasonable costs and attorney's fees.

32 (b) If the court finds that the violation was willful or

1 knowing, the court may, in its discretion, increase the
2 amount of the award to an amount equal to not more than 3
3 times the amount available under subsection (a).

4 Section 30. Criminal penalty. Violation of this Act is a
5 Class C misdemeanor.

6 Section 35. Consumer Fraud and Deceptive Business
7 Practices Act. In addition to any other penalties specified
8 in this Act, violation of this Act constitutes an unlawful
9 practice under the Consumer Fraud and Deceptive Business
10 Practices Act.

11 Section 40. Other remedies. The remedies provided for in
12 this Act are in addition to, and not in lieu of, any other
13 remedies provided for by law.

14 Section 85. The Consumer Fraud and Deceptive Business
15 Practices Act is amended by changing Section 2Z as follows:

16 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

17 Sec. 2Z. Violations of other Acts. Any person who
18 knowingly violates the Automotive Repair Act, the Home Repair
19 and Remodeling Act, the Dance Studio Act, the Physical
20 Fitness Services Act, the Hearing Instrument Consumer
21 Protection Act, the Illinois Union Label Act, the Job
22 Referral and Job Listing Services Consumer Protection Act,
23 the Travel Promotion Consumer Protection Act, the Credit
24 Services Organizations Act, the Automatic Telephone Dialers
25 Act, the Pay-Per-Call Services Consumer Protection Act, the
26 Telephone Solicitations Act, the Illinois Funeral or Burial
27 Funds Act, the Cemetery Care Act, the Safe and Hygienic Bed
28 Act, the Pre-Need Cemetery Sales Act, subsection (a) or (b)
29 of Section 3-10 of the Cigarette Tax Act, subsection (a) or

1 (b) of Section 3-10 of the Cigarette Use Tax Act, the
2 Unsolicited Commercial Electronic Mail Act, or paragraph (6)
3 of subsection (k) of Section 6-305 of the Illinois Vehicle
4 Code commits an unlawful practice within the meaning of this
5 Act.

6 (Source: P.A. 91-164, eff. 7-16-99; 91-230, eff. 1-1-00;
7 91-233, eff. 1-1-00; 91-810, eff. 6-13-00; 92-426, eff.
8 1-1-02.)

9 (815 ILCS 511/Act rep.)

10 Section 90. Repeal. The Electronic Mail Act is repealed.

11 Section 95. Prior cause of action. Any cause of action
12 that is in existence before the effective date of this Act
13 shall not be affected by this Act, but shall instead be
14 governed by the law that was in effect at the time the cause
15 of action arose.